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No.

In The

Supreme Court of the United States

October Term, 1993

In Re: Nomination Papers of Thomas A. Lingenfelter Candidate for the office of Lieutenant Governor of the Commonwealth of Pennsylvania

Petition of Thomas A. Lingenfelter

Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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36 pp

QUESTIONS PRESENTED

1. Whether the failure of the Commonwealth Court of Pennsylvania to enforce statutory requirements deprived your petitioner of due process and equal protection of law and violated his civil rights under the 14th Amendment to the Constitution of the United States and 42 USC § 1983?

2. Whether the Supreme Court of Pennsylvania's one sentence affirmation of the Commonwealth Court Order removing your petitioner from the May 10, 1994 Pennsylvania Primary ballot regardless of the statutory requirements of 25 P.S. § 2937 deprived Lingenfelter and his supporters of their constitutionally guaranteed civil rights under the 14th Amendment to the Constitution of the United States and 42 USC § 1983 and the federally guaranteed right to a "free and fair" election?

3. Whether the statute of limitations 25 P.S. § 2937 imposed on the Court by the state legislature through a legislative act signed by the Governor of Pennsylvania is binding upon the Court or whether the Court can ignore an act of the legislature and therefore deprive your petitioner of his constitutionally guaranteed rights under the 14th Amendment to the Constitution of the United States ?

4. Whether the failure by the court to answer the preliminary objection by Lingenfelter regarding the March 21, 1994 hearing being held outside the statute of limitations violated Lingenfelter's civil and constitutional rights to due process and equal protection of law under the 14th Amendment of the United States Constitution?

5. Whether the Pennsylvania Department of State - Board of Elections' failure to protect and safeguard the Nomination Petitions of Tom Lingenfelter unconstitutionally deprived Lingenfelter and his supporters of the federally guaranteed right to a free and fair election in the May 10, 1994 Pennsylvania primary election and due process of law guaranteed by the 14th Amendment to the Constitution of the United States?

6. Whether the acceptance of the critical evidence (Lingenfelter's originally filed nomination petitions) as authentic by the Commonwealth Court when no chain of custody of the evidence was established violated Lingenfelter's civil and constitutional rights to due process and equal protection of law under the 14th Amendment of the United States Constitution?

7. Whether the Commonwealth Court's sanctioning of fraud by the original petitioners deprived Lingenfelter of his civil and constitutional rights to due process and equal protection of law under the 14th Amendment of the United States Constitution?

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I. **THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE PENNSYLVANIA SUPREME COURT'S REFUSAL TO SET ASIDE THE LOWER COURT'S ORDER REMOVING LINGENFELTER FROM THE BALLOT WHEN THE JUDGE OF THE LOWER COURT MADE AN EXTRA-JURISDICTIONAL DECISION TO IGNORE THE STATUTE OF LIMITATIONS.**

II. THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE PENNSYLVANIA SUPREME COURT'S REFUSAL TO REVERSE THE LOWER COURT'S OPINION NOT TO STRIKE THE CHALLENGE TO LINGENFELTER'S NOMINATION PETITION WHEN THE OBJECTORS FILED FRAUDULENT VERIFICATIONS IN BRINGING SUIT.

III. THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE PENNSYLVANIA SUPREME COURT'S FAILURE TO REVERSE THE LOWER COURT JUDGE'S OPINION WHEREIN HE ERRONEOUSLY RULED THAT THE EVIDENCE [NOMINATION PETITION] BEFORE THE COURT WAS AUTHENTIC.

IV. THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE FAILURE OF THE COMMONWEALTH OF PENNSYLVANIA TO PROTECT AND GUARANTEE FREE AND FAIR ELECTIONS IN PENNSYLVANIA.

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In The

Supreme Court of the United States

October Term, 1993

In Re: Nomination Papers of Thomas A. Lingenfelter
Candidate for the office of Lieutenant Governor
of the Commonwealth of Pennsylvania

Petition of Thomas A. Lingenfelter

PETITION FOR WRIT OF CERTIORARI

Petitioner, Thomas A. Lingenfelter, respectfully prays that a writ of certiorari issue to review the judgement of the Supreme Court of Pennsylvania entered on April 29, 1994. The Pennsylvania Supreme Court's Per Curiam order without an opinion violated petitioner's due process rights under the 1st and 14th Amendments to the United States Constitution and the rights of petitioner and his supporters to a free and fair primary election for the Republican nomination for the office of Lieutenant Governor of Pennsylvania on May 10, 1994

OPINIONS BELOW

The March 23, 1994 opinion of the Commonwealth Court of Pennsylvania has not as yet been reported and is attached hereto in the Appendix at A-1.

The April 29, 1994 Per Curiam Order of the Pennsylvania Supreme Court is attached hereto in the Appendix at A-7.

JURISDICTION

The original action was brought by Angeline Domanico et al against your Petitioner for alleged numerical insufficiencies in his nomination petition. The Commonwealth Court heard the matter on March 21, 1994, beyond the time allowed by the Pennsylvania Election Code, 25 PS § 2937. The Commonwealth Court issued its order and opinion on March 23, 1994.

Lingenfelter appealed to the Pennsylvania Supreme Court on March 31, 1994.

The Supreme Court of Pennsylvania entered judgement on April 29, 1994. Petitioner requested re-argument on May 2, 1994. This petition is filed within 90 days of the Pennsylvania Supreme Court's judgement as allowed by 28 U.S.C. § 2101 (c) and U.S. Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional and statutory provisions:

U.S. Const. amend. I
U.S. Const. amend. XIV
42 USC § 1983
25 Pa.S. § 2937

STATEMENT OF THE CASE

This appeal involves the order of Commonwealth Court Judge James R. Kelley on March 23, 1994 setting aside the Nomination Petition of Thomas A. Lingenfelter for Lieutenant Governor, and the Pennsylvania Supreme Court's affirmation of the order on April 29, 1994.

On March 1, 1994 Thomas A. Lingenfelter filed Nomination Petitions and papers consisting of 1,777 Republican signatures from 26 counties for the office of Lieutenant Governor. Pursuant to the Pennsylvania Election Law, the Department of State - Board of Elections accepted the petitions and thereby certified that Lingenfelter had met the minimum of 1,000 signatures and had 5 counties with at least 100 signatures to fulfill the statutory requirement. Between March 1 and March 21, 1994 various unknown persons, other than Election Board employees, had access to these petitions.

On March 8, 1994, five residents of Bensalem Township, Bucks County, Pennsylvania, who were represented by legal counsel, filed a verified petition which challenged the Nomination Petition of Lingenfelter. On March 9, 1994 the Commonwealth Court issued an Order setting the hearing on the challenge for March 21, 1994 in Harrisburg.

On March 21, 1994 Lingenfelter filed Preliminary Objections to the petition. The Preliminary Objections challenged, inter alia, the Court's jurisdiction and boilerplate allegations in the petition and moved to strike the verified petition because of fraud by the 5 petitioners. The Preliminary Objection also raised the issue of a "free and fair election" citing Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L. Ed 2d 506 (1964).

The trial was held on March 21, 1994 over the objection of petitioner's counsel. On March 23, 1994 the Court rendered its decision removing Petitioner from the ballot. This decision was appealed to the Pennsylvania Supreme Court on March 31, 1994. On April 29, 1994, (ten days before the election), the Pennsylvania Supreme Court affirmed the lower court order without opinion.

An application for re-argument was made on May 2, 1994.

This petition followed.

REASONS FOR GRANTING WRIT

I.

THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE PENNSYLVANIA SUPREME COURT'S REFUSAL TO SET ASIDE THE LOWER COURT'S ORDER REMOVING LINGENFELTER FROM THE BALLOT WHEN THE JUDGE OF THE LOWER COURT MADE AN EXTRA-JURISDICTIONAL DECISION TO IGNORE THE STATUTE OF LIMITATIONS.

THE HEARING ON MARCH 21, 1994 VIOLATED THE STATUTORY LIMITATIONS OF 25 P.S. § 2937 REQUIRING A DISPOSITION WITHIN 15 DAYS AFTER THE LAST DAY FOR FILING NOMINATION PETITIONS AND THE LOWER COURT'S HEARING, OPINION AND ORDER VIOLATED LINGENFELTER'S CONSTITUTIONAL RIGHTS, BOTH FEDERAL AND COMMONWEALTH, TO DUE PROCESS OF LAW, A SPEEDY TRIAL AND A FREE AND FAIR ELECTION.

The Election Code is to be liberally construed so as not to deprive a candidate of the right to run for office. Smith v Brown, 139 Pa. Commonwealth Court 304, 590 A.2d 816 (1991). The Election Code has been turned on its legislative head by the lower court in this case. Judge Kelley cited Moore Nomination Petition 447 Pa 526, 291 A 2d 531 (1972) in overruling the candidate's first preliminary objection to the petition.

25 P.S. § 2937 has been amended three times (1974, 1978 and 1985) since the Moore decision in 1972. The legislature has placed a limitation on the Court's ability to hear Election Law cases. This Court has emphatically stated that "The overriding consideration embodied in Section 977 [25 P.S. § 2937] is the expeditious resolution of objections to a prospective candidate's filings" IN RE Johnson 509 Pa 347, 502 A.2d 142, at p 145. The legislature in 25 P.S. § 2937 has limited the Court jurisdiction in these matters to 15 days after the last date for filing nomination petitions. A statute of limitations by any other name is still a statute of limitations. The statutory mandate cannot be extended by the court in the absence of extraordinary circumstances such as fraud or the breakdown of the judicial process; Petition of Torres 99 Pa. Comm. Ct. 173 512 A.2d 732 (1986) Commonwealth State Ethics Commission v Cresson 528 Pa 339 597 A.2d 1146 (1991). Judge Kelley cited neither fraud nor more importantly the breakdown of the judicial

process when he denied Lingenfelter's first preliminary objection to the jurisdiction of the court to hear the challenge on March 21, 1994, five (5) days after the deadline established by the legislature for judicial determination.

The authority to regulate the election process is vested in the Legislature, Shankey v Stalsey, 436 Pa 65, 257 A.2d 897 (1969), and, accordingly, the jurisdiction of the judiciary flows from statute and cannot be extended by implication beyond the prescription of the act from which it originates. In re Jones 505 Pa 50, 476 A.2d 1287 (1984). Absent an identification of specific statutory authority, the courts are powerless to extend the statutory time limits.

"Objections must be filed within seven days and must be heard within ten days and determined within fifteen days from the last date to file nominating petitions. Primary Nomination Petition of Brady, 31 D. & C.2d 711, 26 Fay.L.J. 44, (1964)." Judicial determination came on the twenty second (22nd) day after filing deadline rather than within fifteen (15) days as established by the legislature.

The Judge of the Lower Court made an extra-jurisdictional decision to ignore the clear and unambiguous legislative mandate and statute of limitation in 25 PS § 2937. If this decision is allowed to stand, it renders meaningless any other statute of limitation in the Commonwealth. This rule would violate both the procedural and substantive rights of due process of law of every citizen of the Commonwealth guaranteed by the United States Constitution.

To grant the Court such an unrestrained exercise of judicial authority threatens the core of democracy by undermining the election process and the right of the voters to select a person of their choice.

The resultant opinion and order of Judge Kelley on March 23, 1994 violated Lingenfelter's Constitutional rights under the 1st and 14th Amendments to the United States Constitution.

II.

THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE PENNSYLVANIA SUPREME COURT'S REFUSAL TO REVERSE THE LOWER COURT'S OPINION NOT TO STRIKE THE CHALLENGE TO LINGENFELTER'S NOMINATION PETITION WHEN THE OBJECTORS FILED FRAUDULENT VERIFICATIONS IN BRINGING SUIT.

THE 5 OBJECTORS FILED A VERIFIED PETITION CHALLENGING LINGENFELTER'S CANDIDACY EVEN THOUGH THEY HAD NO KNOWLEDGE OF THE CONTENTS OF THE PETITION. THE VERIFICATIONS THAT EACH ATTACHED TO THE PETITION WERE FRAUDULENT.

The objectors were subpoenaed to testify and under oath three of the five candidly admitted that they had not seen the petition before March 21, 1994, the date of the hearing. Despite the fact that the objectors sat through the entire presentation of their case after Lingenfelter's request for sequestration was denied, none of the objectors knew Lingenfelter or had knowledge of the signature requirements for nomination petitions for Lieutenant Governor or the number of signatures Lingenfelter filed (1,777) or how many counties were represented in his filings (26 counties) or how many signatures they alleged were defective.

The objectors filed a verified petition challenging Tom Lingenfelter's candidacy. By verifying their petition it takes

this case outside of the decision of In Re Johnson 509 Pa 347, 502A 2d 142 (1985). By attaching fraudulent verifications to their petition the objectors conduct requires a severe sanction by this court.

A review of their testimony from the notes shows clearly that they were incapable of knowing whether or not the facts alleged in their petition were true and correct. In short, they lied. The Court cannot sit idly by and allow their sins to go unpunished. The remedy for this fraud is to strike the objector's challenge and order a new primary election for the Republican Lieutenant Governor of Pennsylvania.

III.

THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE PENNSYLVANIA SUPREME COURT'S FAILURE TO REVERSE THE LOWER COURT JUDGE'S OPINION WHEREIN HE ERRONEOUSLY RULED THAT THE EVIDENCE [NOMINATION PETITION] BEFORE THE COURT WAS AUTHENTIC.

THE OBJECTORS NEVER PROPERLY AUTHENTICATED THE LINGENFELTER NOMINATION PETITIONS AS SUBMITTED ON MARCH 1, 1994. THE CHAIN OF CUSTODY OF THE NOMINATION PETITION WHICH IS A MATERIAL EVIDENTIARY ISSUE WAS NOT PROVEN BY THE OBJECTORS. THE BOARD OF ELECTION FAILED TO PROPERLY SECURE THE CRITICAL DOCUMENTS AND ALLOWED THEM TO BE SUBJECT TO ALTERATION, TAMPERING, THEFT, CHANGE, LOSS AND SUNDRY ABUSES BETWEEN MARCH 1, 1994 AND MARCH 21, 1994 LEAVING THEM WITH NO EVIDENTIARY VALUE.

On March 1, 1994 Tom Lingenfelter filed his Nomination Petitions and papers with the State Board of Elections. The Board of Elections certified that Lingenfelter met the statutory minimum i.e. 1,000 signatures with five counties containing 100 signatures, to run for the office of Lieutenant Governor of Pennsylvania.

Lingenfelter was a valid candidate. Unfortunately, between March 1, 1994 and March 21, 1994 the Nomination Petitions were handled by numerous unknown persons. The Board of Elections was derelict in its duty to keep secure the fundamental documents which allows a citizen access to a position on the ballot.

Lingenfelter testified and offered into evidence an adding machine tape which noted his minimum total signature count at 1,777 and noted 7 counties with signatures in excess of 100. Lingenfelter also testified that additional signatures were added to his petition but were not counted.

Objectors' petition alleges that Lingenfelter's Nominating Petitions contained 1,772 valid signatures. During the hearing petitioners' counsel moved into evidence their list of counties which also identified the same seven counties with 100 or more signatures. The numbers did not match except for Monroe County.

The Court in its opinion concluded that Lingenfelter had 1,766 signatures and also identified the same seven counties with 100 or more signatures. Once again the only agreement among these three sets of numbers was Monroe County at 102. The most significant and relevant disparity occurs in Wayne County. Lingenfelter's count was 112 and the Court's and the objectors' count was 104. The State Election Board never gave an official count of signatures on the Lingenfelter Petition.

Lingenfelter's petitions were filed in alphabetical order by county. Naturally Wayne County was at the end. On their face, it is apparent that someone renumbered the Wayne County pages and scattered them within the petition. Note: page 144 is now page 102; page 143 is now page 115 and page 145 is now page 61.

Something is terribly wrong with this system and the State Board of Elections' handling of Nomination Petitions.

There is uncontradicted testimony of Monna Accurti, Director, that the State Election Board does not require identification of anyone who wants to handle a candidate's nomination petitions after they are filed. Lingenfelter also gave uncontradicted testimony about his personal observation of the lack of security at the Election Board counter as people were examining and handling nomination petitions of various candidates between March 1, 1994 and March 21, 1994. The Election Board offers no control or supervision while the public handles & examines the nomination petitions of a candidate during the extremely crucial time between filing and the last day to challenge a petition. This system is ripe for abuse.

The Nomination Petitions presented at the hearing on March 21, 1994 were loose, not bound, and neither the pages nor the signatures were counted at that time. No official count of the authentic signatures presented at the time of filing on March 1, 1994 was presented during the hearing. Without an official count there is no basis for a challenge. No evidence was presented to establish that the Nomination Petitions presented at the hearing were identical to those filed on March 1, 1994.

Given the admitted loose handling of Lingenfelter's Nomination Petitions at the Board of Elections it is not

unreasonable that a single petition page containing a few signatures in Wayne County - sufficient to pull Lingenfelter below the required minimum of 100 in five counties - could have become dislodged accidentally or intentionally!

On the face of the Nomination Petitions, pages have been renumbered. No one agrees on the signature count. How can any Court, given the presumption of validity of the candidate throw Lingenfelter off the ballot based on the alleged evidence in this case and the lack of an "official count" of the total signatures as certified by the appropriate State authority, i.e. the Board of Elections?

The lower court erroneously ruled that the petitions were authentic despite the testimony of the lack of control of the documents by the Board of Elections. The chain of custody of the crucial evidence was never proven. By analogy, if the evidence in a drug bust was handled in the same manner as the Board of Elections handles filed nomination petitions, a court would throw out the case. For some reason the judge in the court below did not grasp the analogy. The burden of proof is always on the challenger and they cannot make out their case without authentic and best evidence - the Nomination Petitions as filed by Lingenfelter on March 1, 1994.

In brief, the petitioners' burden of proof was not and cannot be met, and therefore the challenge must fail.

IV.

THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE FAILURE OF THE COMMONWEALTH OF PENNSYLVANIA TO PROTECT AND GUARANTEE FREE AND FAIR ELECTIONS IN PENNSYLVANIA.

THE PENNSYLVANIA DEPARTMENT OF STATE - BOARD OF ELECTIONS AND THE PENNSLYVANIA COURT SYSTEM HAVE TURNED THE STATE ELECTION CODE ON ITS HEAD TO KEEP A LEGITIMATE CANDIDATE OFF THE MAY 10, 1994 PRIMARY BALLOT. IN THE PROCESS THEY HAVE VIOLATED THE CIVIL RIGHTS OF YOUR PETITIONER AND HIS SUPPORTERS.

It is fundamental to American liberty that free and fair elections occur. Pennsylvania has become a glaring example of the opposite. In 1993, the election in the 2nd Senate District of Philadelphia showed the depravity of the election process in Pennsylvania. It took Federal intervention to undo the damage. See: Marks v. Stinson, U.S. D. C. , E. D. Pa, No. 93-6157 (1994), recently decided by United States District Judge Clarence Newcomer.

In the matter before this Honorable Court there appears to be a total breakdown of the rule of law, the rules of civil procedure and the rules of evidence. In the process petitioner's rights have been violated by the bureaucracy and the court system. The Pennsylvania Supreme Court completely abrogated its responsibility to the rule of law which is another cornerstone of American freedom. Its one sentence order of April 29, 1994 shows its legal and moral bankruptcy. There is the perception in Pennsylvania that "the fix" is in when someone outside the political party hierarchy tries to gain access to the ballot and the courts remove them from the ballot. Access to the ballot goes directly to the heart of democracy. The Pennsylvania court system has now become an enemy of democracy and the willing tool of political parties.

Your petitioner met and exceeded the threshold requirements to get on the ballot for the office of Lieutenant Governor. On March 1, 1994 he filed

nominating petitions containing 1,777 signatures including 100 signatures from seven different counties.

The trial court in this matter ignored Pennsylvania Rules of Civil Procedure and the Rules of Evidence in reaching its decision. The Supreme Court of Pennsylvania affirmed without opinion in an attempt to throw another significant roadblock in petitioner's path to the ballot box.

The impact of the court's actions on candidate eligibility and removal from the ballot implicate basic Constitutional rights Anderson v Celebrezze 460 U.S. 780, 75 L. Ed 2d 547, 103 S. Ct. 1564 (1983).

Justice Harlan, writing for a unanimous Court in NAACP v Alabama ex rel Patterson 357 U.S. 449, 2 L. Ed 2d 1488, 78 S. Ct. 1163 (1958) stated that it "is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."

The exclusion of Petitioner from the Pennsylvania primary ballot burdens voters freedom of association because an election campaign is an effective platform for the expression of views on the issues of the day and a candidate serves as a rallying point for like minded citizens. Petitioner was favored in an independent public opinion poll conducted by Political Media Research, Inc. of Washington, D.C. for the Thomson News Service. Petitioner out-polled the endorsed party candidate for Lieutenant Governor. The poll clearly shows the petitioner is a bona fide and viable candidate.

The decision of the Pennsylvania Supreme Court on April 29, 1994 is in direct conflict with the Court's decisions on the Federal guarantee of a "free and fair election."

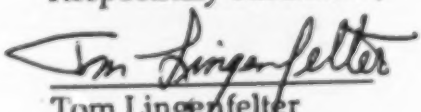
CONCLUSION

The intervention of this Court is necessary to preserve freedom and the right of petitioner and his supporters to a free and fair election. The state has acted in derogation of those rights and guarantees of liberty as enunciated in the United States Constitution and the Bill of Rights as interpreted by the Court.

The petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania should be granted.

Respectfully submitted,

Dated: May 5, 1994



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APPENDIX

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: THE NOMINATION PAPERS OF THOMAS A. LINGENFELTER AS CANDIDATE FOR THE OFFICE OF LIEUTENANT GOVERNOR OF PENNSYLVANIA

NO: 107 M.D. 1994

ANGELINE DOMANICO, JOHN DOMANICO, JOHN WOLANIUK III, JOAN REED and MICHAEL GALLAGHER,
Petitioners,

HEARD: March 21, 1994

BEFORE: HONORABLE JAMES R. KELLEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY JUDGE KELLEY

FILED: March 23, 1994

Thomas A. Lingenfelter (Lingenfelter) filed a nomination petition for Lieutenant Governor in the 1994 Republican primary.

Angeline Domanico, John Domanico, John Wolaniuk III, Joan Reed and Michael Gallagher (petitioners) seek to set aside Lingenfelter's nomination petition.

Under section 912.1 of the Pennsylvania Election Code (code)[1] a candidate for the office of Lieutenant Governor must present a nominating petition containing at least one thousand valid signatures of registered and enrolled members of his/her party, including at least one hundred from each of at least five

[1] Act of June 3, 1937, P.L. 1333, as amended, added by Act of December 12, 1984, P.L. 968, 25 P.S. § 2872.1.

counties. On its face, Lingenfelter's petition contains 1766 signatures with at least one hundred from seven different counties. The seven counties and the number of signatures are: Berks County - 160 signatures, Blair County - 355 signatures, Bucks County - 314 signatures, Montgomery County - 292 signatures, Monroe County -102 signatures, Wayne County - 104 signatures, Lehigh County - 131 signatures. Petitioner's objections are confined to the signatures from the last three counties.

Before addressing the merits of the case, we must address the preliminary objections filed by Lingenfelter. Lingenfelter first argues that the hearing before this court, held on March 21, 1994, was untimely under section 977 of the code[2] which requires that, in the event objections are filed, the court fix a time for hearing not later than ten days after the last day for filing the nomination petition. In this case, the last day for filing the nomination petition was March 1, 1994. During the hearing in this matter, this court ruled from the bench and rejected this argument based on Moore Nomination Petition, 447 Pa. 526, 291 A.2d 531 (1972), in which our Supreme Court held that the scheduling of hearings is a purely judicial function and that the language in the Code regarding scheduling is directory

[2] 25 P.S. § 2937

and not mandatory. Ruling on the remaining preliminary objections was reserved until conclusion of this hearing.

Lingenfelter's second preliminary objection asks this court to strike paragraph 14 of the petition which states: It is believed and therefore averred that the Affidavits and Jurats contained within said nominating papers are incomplete and therefore invalid. Lingenfelter states in his preliminary objections that petitioners ave failed to specifically notify him of the alleged defects in his Affidavits and Jurats. The court finds paragraph 14 states a conclusion without particulars for which Lingenfelter could defend. Motion to strike paragraph 14 is granted.

In his final preliminary objection, Lingenfelter complains that the petitioners in this case do not have personal knowledge of the contents of the petition but signed the verifications attached to the petition at the request of Republican party officials and a rival candidate for Lieutenant Governor. In the hearing, Lingenfelter argued that a fraud had been perpetrated on the court for which he argues that the petition to set aside should be stricken and dismissed.

In response to this argument, petitioners presented uncontradicted evidence that they are registered Republicans, and they argue that this is all that is required for them to qualify as objectors to the nomination petition.[3] In Appeal of Robert C. Barlip, 59

[3] The testimony of the petitioners elicited by Lingenfelter revealed that they had general knowledge of the purpose of the petition, i.e., to challenge Lingenfelter's nomination petition on the basis of insufficient signatures, but they did

not have exact knowledge as to the required number of signatures or the specific deficiences alleged in the petition.

Pa. Commonwealth Ct. 178, 428 A.2d 1058 (1981), this court held that any person who is registered to vote in a particular election has standing to challenge a nomination petition because they have a substantial interest in obtaining complaince which [sic] the election laws by any candidate for whom they may vote. Lingenfelter cites no authority for the proposition that an objector must have personal knowledge of the contents of the petition or must have personally checked the validity of the signatures on the nomination petition, and we decline to impose such a requirement. In In re Johnson , 509 Pa. 347, 502 A.2d 142 (1985), our Supreme Court stated that section 977 of the Code sets forth the procedures to be followed in pursuing an objection, and held that a verification is not required to be included with an objection petition because it is not required under that section. Similarly, section 977 does not require that the petitioners have detailed personal knowledge of the contents of the petition and this court will not dismiss the petition on that basis.

During the hearing in this matter, Lingenfelter raised a question as to the authenticity of the nomination petition in the possession of the court at the time of the hearing. Under subpoena from Lingenfelter, Monna Accurti, Director of Operations for the Bureau of Commissions, Elections and Legislation, appeared and testified as to its authenticity. This court accepts the uncontradicted testimony of Accurti and finds that the nomination petition is authentic.

Lingenfelter nevertheless challenges the procedures followed by the Bureau of Elections in handling the petition between the date it was filed, March 1, 1994, and the last date for filing objections, March 8, 1994. Lingenfelter

testified, based on his personal observation, that the Bureau does not check the identification of persons requesting to examine nomination petitions and does not suprevise those persons while they are examining such petitions. However, Lingenfelter made no allegations that any alterations had been made to his petition. Lingenfelter's own testimony was that he could not obtain an accurate count of the signatures or the number of pages contained in the petition before it was filed because of time constraints involved in filing his nomination petitions at late afternoon on the last day of the filing period. Lingenfelter also testified that he did not challenge the receipt he received for the petition which stated that the receipt contained 142 pages. Absent some allegations and proof of alterations in the nomintion petitions, we reject this challenge to the authenticity of the petition.

Turning to the merits of the case, petitioners presented the testimony of election officials from Lehigh, Monroe and Wayne Counties confirming the allegations of the petition that certain signatures were invalid either because the signers were not registered Republicans in the county for which they signed, the signatures were illegible, or the signatures were duplicates. The respective witnesses testified that there were 48 invalid signatures on the Lehigh County petition, 7 invalid signatures on the Wayne County petition, and 16 invalid signatures on the Monroe County petition. For the contested counties, the total number of signatures is as follows: Lehigh County - 83 signatures, Wayne County - 97 signatures, Monroe County - 86 signatures. We do not see any further need to address the specifics of this evidence because at hearing, counsel for Lingenfelter did not offer any evidence to counter petitioner's evidence and counsel admitted that, based on this evidence, Lingenfelter's nomination petition does not have 100 valid signatures in Lehigh, Monroe or Wayne Counties and therefore does not satisfy the requirement

that he have 100 signatures in each of at least five counties. We find that the number of signatures for Lehigh, Monroe and Wayne Counties are less than the 100 each as conceded by Lingenfelter, and that he has at least 100 signatures in only four counties which is insufficient under the statutory requirements. Accordingly, the nomination petition must be set aside. \Signed\ James R. Kelley, Judge.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: THE NOMINATION PAPERS OF THOMAS A. LINGENFELTER AS CANDIDATE FOR THE OFFICE OF LIEUTENANT GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA.

NO. 107 M.D. 1994

ANGELINE DOMANICO, JOHN DOMANICO, JOHN WOLANIUK III, JOAN REED AND MICHAEL GALLAGHER,
Petitioners.

ORDER

NOW, this 23rd day of March, 1994, it is ordered that the Secretary of the Commonwealth shall set aside the nomination petition of Thomas Lingenfelter for Lieutenant Governor. The Prothonotary is hereby directed, in addition to notifying the parties and their counsel, to also certify a copy thereof to the Secretary of the Commonwealth of Pennsylvania. Stenographic costs shall be assessed on petitioners.

/signed/ James R. Kelley,
Judge

[J-113-94]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: THE NOMINATION PAPERS OF THOMAS A. LINGENFELTER AS A CANDIDATE FOR THE OFFICE OF LIEUTENANT GOVERNOR OF PENNSYLVANIA

No. 24 E.D. Appeal Docket 1994

Appeal from the order of the Commonwealth Court, dated March 23, 1994, at No. 107 M.D. 1994

Pa. Commw.
A. 2d (1994)

OBJECTION OF ANGELINE DOMANICO, JOHN DOMANICO, JOHN WOLANIUK III, JOAN LEAD [SIC] AND MICHAEL GALLAGHER

SUBMITTED: April 15, 1994

ORDER

PER CURIAM

DECIDED: April 29, 1994

Appellant's motion for a stay is denied, and the order of the Commonwealth Court is affirmed.

Mr. Justice Montemuro is sitting by designation as Senior Justice pursuant to Judicial Assignment Docket No. 94 R1800, due to the unavailability of Mr. Justice Larsen, see No. 127 Judicial Administration Docket No. 1, filed October 28, 1993.

Judgement entered.
/signed/ William G. Corey, Esquire, Deputy Prothonotary.

In The
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LIEUTENANT GOVERNOR OF THE COMMONWEALTH OF
PENNSYLVANIA

OBJECTION OF ANGELINE DOMANICO ET AL.

APPLICATION FOR RE-ARGUMENT

Lawrence M. Otter, Esquire
Attorney for Appellant
Thomas A. Lingenfelter
120 South Main Street
Dublin, PA 18917
(610) 292-9000
(215) 249-9408

APPLICATION FOR RE-ARGUMENT

Pursuant to Pa. R.A.P. 2543, petitioner requests re-argument on this matter.

The order in questions states "PER CURIAM Decided: April 29, 1994. Appellant's motion for stay is denied and the order of the Commonwealth Court is affirmed."

The Court has offered no opinion for future guidance in the Pennsylvania elections. Elections at various levels are held annually and the issues raised by Appellant can appear with disturbing regularity to the detriment of our democratic system.

The three major issues that need to be addressed are: 1). the failure of the Board of Elections to safeguard a candidate's nomination petitions and its relationship to the rules of evidence; 2). a political party's utilization of straw dummies and the court system to thwart the principle of a free and fair election which is the essence of democracy and 3). the preliminary objection regarding the date of the hearing outside the parameters of the Pennsylvania Election Code has never been answered by any court.

Respectfully submitted,

_____

Lawrence M. Otter, Esquire
Attorney for Appellant
Thomas A. Lingenfelter
120 South Main Street
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(215) 249-9408

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Thomas A. Lingenfelter
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PENNSYLVANIA ELECTION CODE, 25 P.S. § 2937.

§ 2937. Objections to nomination petitions and papers.

All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition or paper was filed. Upon the presentation of such a petition, the court shall make an order fixing a time for hearing which shall not be later than ten days after the last day for filing said nomination petition or paper, and specifying the time and manner of notice that shall be given to the candidate or candidates named in the nomination petition or paper sought to be set aside. On the day fixed for said hearing, the court shall proceed without delay to hear said objections, and shall give such hearing precedence over other business before it, and shall finally determine said matter not later than fifteen (15) days after the last day for filing said nomination petition or papers. If the court shall find that the said nomination petition or paper is defective under the provisions of section 976,[1] or does not contain a sufficient number of genuine signatures of electors entitled to sign the same under the provisions of this act, or was not filed by persons entitled to file the same, or if any acompanying or appended affidavit contains a material defect or error, it shall be set aside. For purposes of this section, a nomination petition or paper shall include all affidavits required to be filed with such nomination petition

or paper under this act. If the objections relate to material errors or defects apparent on the face of the nomination petition or paper, or on the face of any accompanying or appended affidavits, the court, after hearing, may, in its discretion, permit amendments within such time and upon such terms as to payment of costs, as the said court may specify. In case any such petition is dismissed, the court shall make order as to the payment of the cost of the proceedings, including witness fees, as it shall deem just. If a person shall sign any nomination petitions or papers for a greater number of candidates than he is permitted under the provisions of this act, if said signatures bear the same date, they shall, upon objections filed thereto, not be counted on any petition or paper and if they bear different dates, they shall be counted in the order of their priority of date, for oly so many persons as there are candidates to be nominated or elected. The office of the Prothonotary of the Commonwealth Court and the office of the Secretary of the Commonwealth and the various offices of prothonotary of the court of common pleas shall be open between the hours of eight-thirty o'clock A.M. and five o'clock P.M. on the last day to withdraw after filing nomination petitions and on the last day to file objections to nomination petitions.

As amended 1974, Dec. 10, P.L. 835, No. 280, § 1. As affected 1978, April 28, P.L. 202, No. 53, § 2(a)[1193], effective June 27, 1978. As amended 1985, April 18, P.L. 5, No. 4, § 5, imd. effective.

[1] Section 2936 of this title

CONSTITUTION OF THE UNITED STATES

AMENDMENT I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the givernment for redress of grievances

AMENDMENT XIV. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

42 USCS § 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered a statute of the District of Columbia.